

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Utility Patent Application of

HARDY et al.
Filed Concurrently
Docket No. VACBAG-590
For DEPLOYABLE BAG FOR A VACUUM BOX

Petition for Retroactive Foreign Filing License

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Please, pursuant to 37 CFR 5.25, grant a foreign filing license for the technology of the present application, retroactive to this September 4, 2003.

A copy of the specification for the technology, embodied in a U.S. utility patent application filed concurrently is attached.

Instructions were given, and a corresponding application has been filed in Canada on this September 4, 2003.

Priority of U.S. provisional patent application No. 60/408262 filed on September 5, 2002 was claimed in both the present U.S. application and the corresponding Canadian patent application. A foreign filing license was granted in the provisional case, and a copy of that foreign filing license and provisional specification are also attached hereto.

Also, I hereby state, and declare, that:

1. The subject matter in question was not under a secrecy order at the time it was filed abroad in Canada, and that it is not currently under a secrecy order.
2. The present license is most diligently sought after the discovery of the proscribed foreign filing as a license is being sought hereby on the afternoon of the day on which the undersigned gave instructions for the Canadian filing.
3. In explanation of why the material was filed abroad through error and without deceptive intent without the required license under 37 CFR 5.11 having first been obtained, the following is noted:

During the morning of this September 4th, 2003, the undersigned met with the three named inventors of the provisional patent application and the technology embodied in the utility patent application filed concurrently. Two of the inventors are from Canada, and one is from the United States. Subject matter additional to the subject matter disclosed in the provisional application was set forth in the utility patent application this morning, most notably such as depicted in FIGS. 8-13. Some written description was added

then also. The inventors reviewed the U.S. application, and executed the declaration later in the morning, shortly after eleven o'clock.

It was then that I asked the inventors if I should sign a non-publication request, or if they wished to file the application anywhere else besides the U.S. After a brief discussion, the inventors indicated that they would like to have an application filed in Canada only. Owing to the time of day and the September 4th deadline for claiming the benefit of the provisional filing, I immediately called David J. French, who is a resident Canadian patent whose office is in Ottawa, to request that he file the case today, which he said that he would do, and shortly before noon I faxed a copy of the U.S. specification to him, which corresponded to the U.S. utility case exactly except that I deleted the section from the U.S. case that cross-referenced the provisional patent application and claimed its benefit.

The thought of a foreign filing license for the corresponding Canadian patent application filing did not cross my mind until later in the day, about two o'clock in the afternoon.

At that time I tried calling Mr. French but was unsuccessful. I then immediately called for Licensing (703 306 4187) and explained the situation in general to Nichole. She indicated that I could file a petition for a retroactive foreign filing license, and that the fee was \$130.00.

Then I looked up the rules in MPEP section 140. Along lines of the same, I understand that some of the subject matter of the technology under consideration was invented in the U.S.


As this is being written, it is now about four o'clock in the afternoon. Under the circumstances, I believe that filing of the present petition is the proper course to take.

This petition with its \$130-fee (Ck. #531) is thus submitted.

No deceptive intention was or is present.

All statements made herein, of my own knowledge are true, and all statements made herein on information and belief are believed to be true. Also, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001, and that such willful false statements may jeopardize the validity of the present application or any patent issued thereon.

Respectfully submitted,

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Dated: Sep. 4, 2003 A.D.

Attmt/encl